

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11200 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

FAROOK ALIAS CHHAPARO	CHHOTAMIYA SHAIKH
Versus	
COMMISSIONER OF POLICE	BARODA CITY P.C.B.OFFICE

Appearance:

1. Special Civil Application No. 11200 of 2002
MS DR KACHHAVAH for Petitioner No. 1
MR KAMLESH KACHHAVAH for Petitioner No. 1
MR MK PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/03/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged his detention order dated 25.7.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "dangerous person" and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference about three criminal cases, which are pending against the petitioner. So far as the case at serial No.1 is concerned, the same is under Section 324 of IPC read with Section 135 of the Bombay Police Act; the case at serial No.2 is filed under Sections 452, 504, 506(2) of IPC read with Section 135 of the Bombay Police Act and the third case is filed under Sections 324, 504 and Section 135 of the Bombay Police Act. The detaining authority also recorded statements of some witnesses in the detention order. The detaining authority, after having been satisfied about the activities of the detenu, has detained the petitioner by way of preventive detention.

#. At the time of hearing of this petition, the learned advocate for the petitioner submitted that all three cases which are referred to in the detention order relate to the individual dispute between the complainant and the accused and it cannot be said that any public order is disturbed, which would justify the authority in passing the detention order. It is submitted that at the most, the petitioner is guilty of disturbing the law and order if at all it is found that the petitioner has committed the aforesaid offence. In order to substantiate her say, the learned advocate for the petitioner has relied upon the judgment of the Division Bench of this Court reported in 2000(1) GLR 816, wherein in paras 19, 20, 20-A and 21 it has been observed as under :

"19. The Division Bench then considered the law laid down by the Apex Court in *Piyush Kantilal v. Commissioner of Police, Ahmedabad City*, AIR 1989 SC 491 : [1989 (1) GLR 563 (SC)] and *T.Devaki v. State of Tamil Nadu*, AIR 1990 SC 1086. In *Piyush Kantilal*, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the

detenu in maintenance of public order. Similarly, in T.Devaki panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, an action of preventive detention was uncalled for.

20. The Division Bench following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

20A. Again, in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police & Ors., 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh v. State of West Bengal, 1970 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases.

21. So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "Law and Order" and not "Public Order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "Public Order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any

other case. Appeal is accordingly allowed. No order as to costs. Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority (Vide Halsbury's Laws of England, 4th Edition, Vol.11, paras 1492-95; pp. 791-93; Mohd. Subrati v. State of W.B., AIR 1973 SC 2684, Khudram v. State of W.B., AIR 1975 SC 550; Ranjit Singh v. State of Pepsu, AIR 1959 SC 843; Dulal v. State of W.B., AIR 1974 SC 2561; Abdul Gaffar v. State of W.B., AIR 1975 SC 1496; Krishna Murari v. Union of India, AIR 1975 SC 1877; Shaikh Hanif v. State of W.B., AIR 1974 SC 679; Vijay Narain v. State of Bihar, AIR 1984 SC 1334; Suraj Pal v. State of Maharashtra, AIR 1986 SC 2177)."

#. As stated above, reference about the said cases are of individual nature, which would not affect the law and order situation. Considering the aforesaid aspect of the matter and considering the judgment of the Division Bench referred to above, it cannot be said that there is a breach of public order and it affects the law and order. In that view of the matter and in view of the judgment referred to above, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 25.7.2002 is quashed and set aside. The detenu Farook Alias Chhaparo Chhotamiya Shaikh is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar, J)
(pathan)